

# EXHIBIT P

C.S.R. 12553

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3  
4 THE WIMBLEDON FUND, SPC (CLASS )  
5 TT), )  
6 )  
7 PLAINTIFFS, )  
8 )  
9 VS. ) CASE NO.  
10 ) 2:15-CV-6633-CAS-ASJWX  
11 )  
12 GRAYBOX LLC; INTEGRATED )  
13 ADMINISTRATION; EUGENE SCHER, AS )  
14 TRUSTEE OF BERGSTEIN TRUST; AND )  
15 CASCADE TECHNOLOGIES CORP., )  
16 )  
17 DEFENDANTS. )  
18 \_\_\_\_\_ )  
19 )  
20 )  
21 )

16 DEPOSITION OF KEITH KELTY, taken on behalf of the  
17 Plaintiff, at 10100 Santa Monica Boulevard, 13th Floor,  
18 Los Angeles, California, commencing at  
19 9:34 a.m., Friday, March 29, 2019, before Sandra Mitchell,  
20 C.S.R. 12553, pursuant to Notice.  
21

14 generally custodians hold the assets in their name. I  
15 don't think SocGen was comfortable with Swartz IP, and  
16 Albert pushed the envelope to make it happen.  
17 Q If you turn to exhibit seven, please. That's  
18 are two documents that were attached. There are two  
19 document attached to this e-mail to Kia Jam to David  
20 Bergstein, et al. And the first is a letter dated  
21 November 17, 2011 to Keith Wellner.  
22 Have you seen this letter before?  
23 A Yes, we were referred to this as a side letter.  
24 Q Okay. When did you first see the side letter?  
25 A After we were notified of Swartz IP for the

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1 first time when we began investigations. It could be  
2 with the information provided to us by Albert. Could be  
3 information we received from elsewhere. I don't know  
4 but I'll say it was after the fact.  
5 Q As of November 2011, Wimbledon Fund was not in  
6 possession of the side letter; correct?  
7 A I do not think so.  
8 Q And in fact, the next document after the side  
9 letter is the note purchase agreement between Swartz IP  
10 and SocGen, and that's all also an agreement that  
11 Wimbledon Fund didn't discovery until the sometime nin

12 2012?

13 A Correct.

14 Q As of November 2011 when the directors of

15 Wimbledon Fund executed the note purchase agreement,

16 they were not relying on the side letter; correct?

17 A Correct.

18 Q They didn't even know a side letter existed;

19 correct?

20 A That's correct.

21 Q Now if we look at the side letter in the third

22 bullet point, it says, "upon receipt of 12.5 million

23 from W. TT. which I assume is Wimbledon Fund T. SIP

24 agrees to make the following distributions 325,675 to

25 partners fund and 4,474,325 to or as directed by

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1 Pineboard Holdings Inc.

2 Do you see that?

3 A I do.

4 Q In or around November 2011, do you know if

5 Swartz IP made any representations that it was going to

6 use the monies that were received by Wimbledon?

7 A Not to the fund.

8 Q In the note purchase agreement, between Swartz

9 IP and Wimbledon Fund, there is no use of proceeds

2 Wimbledon Fund the entity that you're representing today

3 was unaware that over \$3 million was paid to a different

4 Wimbledon called the Partners Fund?

5 A That's correct.

6 Q The lawsuit that you're referenced, where was

7 that been filed?

8 A New York. We're all over the place, so bear

9 with me. We have four lawsuits total.

10 Q That lawsuit is ongoing; is that right?

11 A Yes.

12 Q And then the second subparagraph under 3 is

13 4,474,325 or to as directed by Pineboard Holdings. Are

14 you aware that at any point between November 2011 and

15 August 2012, that Wimbledon TT was advised that Swartz

16 IP was going to send 4,474, 325 to Pineboard?

17 A Wimbledon was not advised.

18 Q This will be Exhibit 9.

19 (Exhibit was marked for

20 identification by the Court Reporter

21 and is attached hereto.)

22 BY MR. WIECHERT:

23 Q Now you'll notice in earlier dated in August of

24 2011 which is approximately a couple months before the

25 execution of the note purchase agreement.

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1 Do you see that?

2 A I do.

3 Q Do you recall when Wimbledon Fund first started  
4 doing diligence on David Bergstein to find out who he  
5 was and what he was all about?

6 A After November -- September 30, 2012. Or was  
7 August 30, whatever the notice from Mr. Hallac was sent  
8 out about SIP. August 30, I think it was.

9 Okay.

10 Q Okay. And excuse me if I've asked this in a  
11 different way before. I don't want to be repetitive. At  
12 the time that the directors Wimbledon executed the note  
13 purchase agreement, that was signed by Kia Jam, they did  
14 not know who Kia Jam was; correct?

15 A I don't think so.

16 Q You think I'm correct?

17 A Yes.

18 Q Yes?

19 A I do.

20 Q So from the standpoint of the directors, if  
21 John Smith had signed, it wouldn't have mattered?

22 A Same thing. This same thing, yeah.

23 Q Okay. There are a number of discovery  
24 responses that were provided to us and they didn't have  
25 verification.

23 A This one.

24 Q I want to go down some of the topics and make  
25 sure I covered everything.

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1 A Okay. Did you ever sign a version of this side  
2 letter. We don't have one.

3 Q You got what we got.

4 A I guess.

5 Q And so page 7 of the Exhibit 1, deposition  
6 topics. I just want to run down some of these if I  
7 haven't covered them already.

8 But other than Mr. Jam signing as vice  
9 president on the purchase agreement and notes. What  
10 other facts do you support the notion that he was the  
11 alter ego of SIP?

12 A There is an affidavit that he signed, his own  
13 affidavit. Describing him as an officer of Swartz IP.  
14 There is all the wire transfers some of which he's  
15 involved in by e-mail and actually receiving funds  
16 personally. This is more legal -- I'm not a lawyer but  
17 I'm just talking off top of my head of the it's not like  
18 I made notes for this. But we have our reasons. We  
19 have our legal team has a list of reasons.

20 Q All right. I'm asking you for what you

21 understand?

22 A Just evidence that I've seen. There is a lot  
23 that points to Mr. Jam being involved in a much larger  
24 way. In fact the fact that he signed the agreement to  
25 me dictates that this fraud or the Swartz IP transaction

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1 was caused. Had Mr. Jam not signed the Swartz IP note,  
2 we might not even be here today could be completely  
3 different scenario. And the Swartz IP transaction may  
4 not have never happened.

5 Q And the sentiment you just expressed.

6 A Yes.

7 Q If David Bergstein had asked someone else to  
8 sign that document like Frymi Biedak would that have  
9 changed anything?

10 A Then it would have been Frymi Biedak that  
11 triggered the fraud.

12 Q But in terms ever actually going forth with the  
13 note purchase agreement it didn't matter whose name was  
14 on this agreement; correct?

15 A Weston directed the directors of the fund to  
16 sign the note purchase agreement. I don't believe that  
17 they knew who the representative of Swartz IP was at the  
18 time.



19 Q You've pulled or at least your client has  
20 pulled the bank reports of Deutsche Bank where the two  
21 wires from Wimbledon to Swartz IP totaling the  
22 \$17 million went?

23 A I was aware of that.

24 Q Did you pull the signature cards as well.

25 A Yes.

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1 Q You realize David Bergstein was the sole signer  
2 on this account, correct?

3 A From the signature cards I've seen?

4 Q Yes?

5 A Yes.

6 Q Paragraph 2, all facts supporting or refuting  
7 or relating to the allegations in the complaint that I  
8 fraudulently received \$2 million of this NPA proceed for  
9 improper use including personal benefit to Mr. Bergstein  
10 and/or Mr. Jam, are you aware that Integrated  
11 Administration spent some monies on trying to develop a  
12 medical billing business?

13 A You know they could say what they want. I'm  
14 not aware.

15 Q Number 4 is all facts and documents relating to  
16 all due diligence conduct by Wimbledon relating to